

E-File: September 4, 2009

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Attorneys for Debtors and Debtors in Possession

**UNITED STATES BANKRUPTCY COURT****DISTRICT OF NEVADA**

In re:

**THE RHODES COMPANIES, LLC, aka**  
 "Rhodes Homes," et al.,<sup>1</sup>  
 Debtors.

Case No.: BK-S-09-14814-LBR  
 (Jointly Administered)

Chapter 11  
 Hearing Date: October 2, 2009  
 Hearing Time: 1:30 p.m.  
 Courtroom: 1

Affects:



All Debtors

<sup>1</sup> The Debtors in these cases, along with their case numbers are: Heritage Land Company, LLC (Case No. 09-14778); The Rhodes Companies, LLC (Case No. 09-14814); Tribes Holdings, LLC (Case No. 09-14817); Apache Framing, LLC (Case No. 09-14818); Geronimo Plumbing LLC (Case No. 09-14820); Gung-Ho Concrete LLC (Case No. 09-14822); Bravo, Inc. (Case No. 09-14825); Elkhorn Partners, A Nevada Limited Partnership (Case No. 09-14828); Six Feathers Holdings, LLC (Case No. 09-14833); Elkhorn Investments, Inc. (Case No. 09-14837); Jarupa, LLC (Case No. 09-14839); Rhodes Realty, Inc. (Case No. 09-14841); C & J Holdings, Inc. (Case No. 09-14843); Rhodes Ranch General Partnership (Case No. 09-14844); Rhodes Design and Development Corporation (Case No. 09-14846); Parcel 20, LLC (Case No. 09-14848); Tuscany Acquisitions IV, LLC (Case No. 09-14849); Tuscany Acquisitions III, LLC (Case No. 09-14850); Tuscany Acquisitions II, LLC (Case No. 09-14852); Tuscany Acquisitions, LLC (Case No. 09-14853); Rhodes Ranch Golf Country Club, LLC (Case No. 09-14854); Overflow, LP (Case No. 09-14856); Wallboard, LP (Case No. 09-14858); Jackknife, LP (Case No. 09-14860); Batcave, LP (Case No. 09-14861); Chalkline, LP (Case No. 09-14862); Glynda, LP (Case No. 09-14865); Tick, LP (Case No. 09-14866); Rhodes Arizona Properties, LLC (Case No. 09-14868); Rhodes Homes Arizona, L.L.C. (Case No. 09-14882); Tuscany Golf Country Club, LLC (Case No. 09-14884); and Pinnacle Grading, LLC (Case No. 09-14887).

☒ Affects the following Debtor(s)  
 RHODES DESIGN AND DEVELOPMENT  
 CORPORATION

**MOTION OF DEBTOR FOR ORDER APPROVING STIPULATION TO LIFT THE  
 AUTOMATIC STAY TO EFFECTUATE PREPETITION  
 SETTLEMENT WITH THE FULKS HOMEOWNERS;  
DECLARATION OF PAUL D. HUYGENS IN SUPPORT THEREOF**

By this Motion (the “Motion”), Rhodes Design & Development Corp. (“RD&D”), one of the above-captioned debtors and debtors in possession (the “Debtors”), respectfully requests that the Court approve the stipulation (the “Stipulation”), attached as Exhibit “1” to the proposed order, with plaintiffs Eric Fulks, Trust Of Henry Hung-Yeh Tiee, Samuel and Ossie L. Wiggins, Kerry Anderson, Willie and Lenell Patrick, Jr., William and Carol Q. Griffith, Heidi Metellus, Robert C. and Lorraine Anthonisen, Jr., Bryan and Carla Bertges, Audrey Gray, Margaret F. Williams-Jones; James Candela and Diane Rosser, Roberto And Veronica Medina, Neville Emerton and Julia Moore, Gwen E. Amie, Andrea Crapanzano, Lynn I. Thayer, Christine Graeven and Antoinette Buyan, Paul H. Evers, Vickie L. Curtis, Jeffrey W. and Brenda S. Baker, William N. Thurston, Donald Fieselman and Lisa Wochinski, David Garcia, Linda L. Dale, Farrow J. and Hellen A. Smith, Michael Orlando; Kevin G. Fellowes; Stephen M. Robison; Lee A. O’Brien; Brad and Amie Modglin; Donell Jackson; Larry J. and Ardis Leavitt; Attila S. and Roanna Maczala; Peter M. Chura and Michael T. Palladino; Portia Powell and Victoria Leigh; James and Simone Cook; Curtis A. and Susan Bunce; and Thomas C. Groce (collectively, the “Homeowners”). The Stipulation provides for the lifting of the automatic stay for the limited purpose of authorizing the parties to take the actions necessary to effectuate a prepetition settlement (the “Settlement”), and the withdrawal of proofs of claim exceeding \$4 million in the aggregate.

RD&D believes that the Settlement is a prepetition settlement because it was entered into the record in District Court prior to the Petition Date. Nevertheless, out of an abundance of caution, in case the Court believes the Settlement is not a prepetition settlement because certain actions still need to be taken to effectuate the Settlement, RD&D is seeking court approval of the Settlement pursuant to Federal Rule of Bankruptcy Procedure 9019(a). For the reasons set forth

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below, including that all payments to obtain the release of claims against RD&D are being made by RD&D's insurer, the Settlement is in the best interests of RD&D's estate, all of the Debtors in these cases, and all parties in interest.

A copy of the proposed order approving this Motion is attached hereto as Exhibit "A."

## I.

### STATEMENT OF FACTS

#### A. General Background

1. On March 31, 2009, the above-captioned Debtors (the "Primary Filers") except Tuscany Golf Country Club, LLC, Pinnacle Grading, LLC, and Rhodes Homes Arizona, LLC (the "Secondary Filers") filed voluntary petitions for relief under chapter 11 of title 11 of the Bankruptcy Code. On April 1, 2009, the Secondary Filers filed voluntary petitions for relief under chapter 11 of the Bankruptcy Code. All references to Petition Date herein shall mean March 31, 2009 for the Primary Filers or April 1, 2009 for the Secondary Filers, as applicable. The Debtors are continuing in possession of their property and are operating and managing their businesses, as debtors in possession, pursuant to sections 1107 and 1108 of the Bankruptcy Code.

#### B. The Litigation

2. The Homeowners are the owners of forty (40) single-family residences in a development known as the Preserve located in Las Vegas, Nevada. The residences were originally developed and sold by RD&D. On September 26, 2006, the Homeowners filed an action (the "Litigation") in Clark County District Court (Eighth Judicial District Court) (the "District Court") to recover for constructional defects in the above-referenced forty (40) homes, which is identified as *Fulks, et al. v. Rhodes Design and Development, et al.*, Clark County District Court Case No. A528806. Defense counsel for RD&D's insurer, Lexington Insurance (the "Insurer"), responded on behalf of RD&D and a third-party complaint was filed which named a number of the original subcontractor entities that worked at the Preserve as third-party defendants (the "Third-Party Defendants"). The Homeowners believe they are entitled to

1 recover from insurance policies with respect to certain claims and causes of action related to the  
2 alleged defects for the forty (40) homes in the Litigation.

3 **C. Prepetition Settlement**

4 3. In February of 2009, the Settlement was reached for the construction defect  
5 Litigation which, as regards RD&D, consists of certain payments to be made by RD&D's Insurer  
6 in return for an executed release from each of the Homeowners. The Settlement was put on the  
7 record in District Court in March of 2009. The entirety of RD&D's portion of the Settlement  
8 amount, \$437,250, for the release of all Claims against RD&D, will be paid by RD&D's Insurer;  
9 none of the monies needed to effectuate the Settlement on behalf of RD&D will be provided by  
10 funds from the RD&D bankruptcy estate.

11 **D. The Stipulation**

12 4. Pursuant to the Stipulation, the Homeowners shall proceed against RD&D as a  
13 nominal defendant only so that the Homeowners may proceed with and enforce the Settlement  
14 that was reached in the Litigation. As stated above, the monies to be paid on behalf of RD&D  
15 are solely through RD&D's available insurance policies.

16 5. Any and all portions of the Homeowners' claims or causes of action, whether  
17 prepetition or postpetition claims or causes of action, that are not fully satisfied by RD&D's  
18 available insurance policies under the Settlement are forever waived and discharged as against  
19 RD&D and the Debtors, even if the Homeowners are unable to obtain any recovery from any  
20 insurance policies. The Homeowners' \$4 million in claims that have been filed in the RD&D  
21 bankruptcy case, and are listed on Attachment A to the Stipulation, shall be deemed withdrawn  
22 and the claims agent shall be directed to reflect such proofs of claims as withdrawn.

23 6. RD&D supports the Settlement and the Stipulation because the Insurer is paying  
24 for the release of RD&D. The compromise reached in the Settlement is a fair and reasonable  
25 one, offering the best net result for the estate because the Settlement promptly resolves these  
26 disputes, avoiding protracted and expensive litigation, and eliminates RD&D's exposure of  
27 approximately \$4 million under the Litigation, as represented by the proofs of claim being  
28 withdrawn pursuant to the Stipulation, without expending any of RD&D's funds.

1 II.

2 **CAUSE EXISTS TO LIFT THE AUTOMATIC STAY FOR THE LIMITED PURPOSE**  
 3 **OF PERMITTING THE PARTIES TO EFFECTUATE THE SETTLEMENT**

4 The automatic stay imposed by section 362(a) of the Bankruptcy Code (“Code”), 11  
 5 U.S.C. §362(a), may be terminated, annulled, modified or conditioned upon a finding of cause:

6 [T]he court shall grant relief from the stay provided under  
 7 subsection (a) of this section, such as by terminating, annulling,  
 8 modifying, or conditioning such stay –

9 (1) for cause ....

10 11 U.S.C. §362(d)(1). “Cause” has no single definition and is to be determined case-by-case. *In*  
 11 *re Tuscon Estates, Inc.*, 912 F.2d 1162, 1166 (9th Cir. 1990); *In re MacDonald*, 755 F.2d 715,  
 12 717 (9th Cir. 1985).

13 Among the “causes” justifying stay relief to permit continuation of a prepetition  
 14 nonbankruptcy action is that granting stay relief would promote judicial economy and save costs.  
 15 *In re Kemble*, 776 F.2d 802 (9th Cir. 1985); *In re Universal Life Church, Inc.*, 127 B.R. 453  
 16 (E.D. Cal. 1991), *affirmed* 965 F.2d 777.

17 In the present case, the Stipulation permits all the parties, including RD&D, to avoid  
 18 protracted and expensive litigation, while eliminating RD&D’s exposure under the Litigation at  
 19 no cost to RD&D’s estate. The Stipulation also provides for the withdrawal of 40 claims  
 20 asserted in RD&D’s bankruptcy case in the aggregate amount exceeding \$4 million.  
 21 Accordingly, as the Stipulation promotes judicial economy and saves extensive costs, RD&D  
 22 respectfully submits that cause exists to lift the automatic stay to permit the Settlement to be  
 23 effectuated, and the Stipulation should be approved.

24 III.

25 **THE SETTLEMENT IS IN THE BEST INTEREST OF THE ESTATE**

26 As stated above, RD&D believes the Settlement is a prepetition settlement because it was  
 27 entered into the record in District Court prior to the Petition Date. Nevertheless, out of an  
 28 abundance of caution, if the Court believes the Settlement is not a prepetition settlement then

RD&D is seeking approval of the Settlement pursuant to Federal Rule of Bankruptcy Procedure 9019(a).

**A. Standard for Approval of Settlements**

Federal Rule of Bankruptcy Procedure 9019(a) provides,

On motion by the trustee and after hearing on notice to creditors, the debtor and indenture trustees as provided in Rule 2002(a) and to such other entities as the court may designate, the court may approve a compromise or settlement.

The standard for approval of a compromise was further addressed by the Supreme Court in *Protective Committee for Independent Stockholders of TMT Trailer Ferry, Inc. v. Anderson*, 390 U.S. 414, *reh'g denied*, 391 U.S. 909 (1968). There, the Court held that a bankruptcy court in considering whether to approve a compromise, should inform itself regarding

all facts necessary for an intelligent and objective opinion of the probabilities of ultimate success should the claim be litigated. Further, the judge should form an educated estimate of the complexity, expense, and likely duration of such litigation, the possible difficulties of collecting on any judgment which might be obtained, and all other factors relevant to a full and fair assessment of the wisdom of the proposed compromise.

*Id.* The court further held in *TMT Trailer* that compromises reached during the course of insolvency proceedings must be “fair and reasonable.” 390 U.S. at 424. Significantly, the court stated that “[b]asic to this process in every instance, of course, is the need to compare the terms of the compromise with the likely rewards of litigation.” *Id.*

In determining whether the proposed settlement is fair and equitable, two principles should guide this Court. First, “[c]ompromises are favored in bankruptcy,” 10 Lawrence P. King, *Collier on Bankruptcy*, ¶ 9019.01, at 9019-2 (15th ed. rev. 1997) (citing *In re Sassalos*, 160 B.R. 646, 653 (D. Ore. 1993)), and are “a normal part of the reorganization process.” *Anderson*, 390 U.S. at 424, 88 S.Ct. at 1163 (quoting *Case v. Los Angeles Lumber Prods. Co.*, 308 U.S. 106, 130, 60 S.Ct. 1, 14 (1939)); *In re A & C Properties*, 784 F.2d 1377, 1381 (9th Cir. 1986) (“The law favors compromise and not litigation for its own sake....”); *Michael*, 183 B.R. at 232 (Bankr. D. Mont. 1995) (“[I]t is also well established that the law favors compromise.”);

1 *Best Products*, 16 B.R. at 50; *Nellis v. Shugrue*, 165 B.R. 115, 123 (S.D.N.Y. 1994) (Court  
2 recognizes “the general rule that settlements are favored....”).

3 Second, settlements should be approved if they fall above the lowest point on the  
4 continuum of reasonableness. “[The] responsibility of the bankruptcy judge . . . is not to decide  
5 the numerous questions of law and fact raised by the appellants but rather to canvass the issues  
6 and see whether the settlement fall[s] below the lowest point in the range of reasonableness.” *In*  
7 *re W.T. Grant Co.*, 699 F.2d 599, 608 (2d Cir. 1983); *In re Planned Protective Servs., Inc.*, 130  
8 B.R. 94, 99 n.7 (Bankr. C.D. Cal. 1991). *See generally In re Blair*, 538 F.2d 849, 851 (9th Cir.  
9 1976) (Court should not conduct a “mini-trial” on the merits of a proposed settlement). Thus, the  
10 question is not whether a better settlement might have been achieved or a better result reached if  
11 litigation pursued. Instead, the court should approve settlements that meet a minimal threshold  
12 of reasonableness. *Nellis*, 165 B.R. at 123; *In re Tech. for Energy Corp.*, 56 B.R. 307, 311-312  
13 (Bankr. E.D. Tenn. 1985); *In re Mobile Air Drilling Co., Inc.*, 53 B.R. 605, 608 (Bankr. N.D.  
14 Ohio 1985); 10 *Collier on Bankruptcy* ¶ 9019.02, at 9019-4.

15 The Ninth Circuit Court of Appeals has held that the determination of whether a proposed  
16 settlement agreement meets the requisite standards of fairness, equity and reasonableness, is a  
17 function of several factors: (a) the probability of success in the litigation; (b) the difficulties, if  
18 any, to be encountered in the matter of collection; (c) complexity of the litigation involved, and  
19 the expense, inconvenience and delay necessarily attending it; and (d) the paramount interest of  
20 creditors and a proper deference to their reasonable views. *See Martin v. Kane (In re A&C*  
21 *Properties)*, 784 F.2d 1377, 1381 (9<sup>th</sup> Cir.), *cert. denied sub nom., Martin v. Robinson*, 479 U.S.  
22 854 (1986); *accord Woodson v. Fireman’s Fund Insur. Co. (In re Woodson)*, 839 F.2d 610, 620  
23 (9<sup>th</sup> Cir. 1988); *In re MGS Marketing*, 111 B.R. 264, 267 (B.A.P. 9<sup>th</sup> Cir. 1990).

## 24 **B. Application to the Settlement**

### 25 1. Probability of Success in Litigation

26 By entering into the Settlement, RD&D eliminates the risk of lengthy, costly and  
27 potentially unsuccessful litigation.  
28



2. Difficulty of Collection

This second factor typically applies where a debtor asserts a claim against a third party and that party's collectibility is in issue. This factor is not applicable.

3. Complexity, Expense and Burden of Litigation

This third factor clearly favors approval of the Settlement. By entering into the Settlement, RD&D will avoid any potential expense regarding the Litigation.

4. Interest of Creditors

Under the Settlement, the Insurer is paying for the release of all claims against RD&D. Accordingly, under the Settlement RD&D eliminates future litigation costs and exposure under the Lawsuit, as evidenced by the proofs of claim the Homeowners filed, at no cost to the estate. In addition, RD&D has reviewed the circumstances of the Settlement and does not believe that it has any claims or causes of action that will be released against the Homeowners and, therefore, RD&D does not believe it is relinquishing any *bona fide* claims with respect to the Homeowners.

RD&D submits that the proposed Settlement should be approved because (i) it is supported by sound business justification, (ii) it is reasonable, and (iii) the four *Martin* factors weigh in favor of approval. The Settlement results in a fair and equitable compromise for the estate at no expense to the estate. Given the cost of litigation, RD&D believes that the Settlement is in the best interests of the estate, creditors and all parties in interest. RD&D believes that the terms of the Settlement are fair and reasonable, satisfy the standard promulgated by the Ninth Circuit governing compromise of controversies under Bankruptcy Rule 9019 and should be approved.

**IV.**

**NOTICE**

Notice of this Motion has been given to (i) the Office of the United States Trustee; (ii) counsel to the Committee; (iii) counsel to the secured lenders; (iv) those persons who have requested notice pursuant to Rule 2002 of the Federal Rules of Bankruptcy Procedure; (v) counsel to the Homeowners; (vi) counsel to the subcontractors; and (vii) the Insurer and its counsel. RD&D submits that in light of the nature of the relief requested and that no monies of the estate are being expended under the Settlement, no other or further notice need be given.



V.

**CONCLUSION**

**WHEREFORE**, RD&D respectfully requests that the Court approve the Stipulation, approve the Settlement if the Settlement is not a prepetition settlement and grant such other and further relief as is just and proper under the circumstances.

**DATED** this 4th day of September, 2009.

LARSON & STEPHENS

/s/ Zachariah Larson, Esq.

Zachariah Larson, Bar No. 7787

Kyle O. Stephens, Bar No. 7928

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**DECLARATION OF PAUL D. HUYGENS**

I, Paul D. Huygens, declare as follows:

1. I am the Senior Vice President of Special Projects for the Debtors.

2. Except as otherwise stated, all facts contained within this Declaration are based upon personal knowledge (albeit my own or that gathered from others within the Debtors' organization), my review of relevant documents, or my opinion based upon my experience concerning the operations of the Debtors and Rhodes Design & Development Corp. ("RD&D"). If called upon to testify, I would testify to the facts set forth in this Declaration.

3. The Homeowners, as defined in the Motion, are the owners of forty (40) single-family residences in a development known as the Preserve located in Las Vegas, Nevada. The residences were originally developed and sold by RD&D. On September 26, 2006, the Homeowners filed an action (the "Litigation") in Clark County District Court (Eighth Judicial District Court) (the "District Court") to recover for constructional defects in the above-referenced forty (40) homes, which is identified as *Fulks, et al. v. Rhodes Design and Development, et al.*, Clark County District Court Case No. A528806. Defense counsel for RD&D's insurer, Lexington Insurance (the "Insurer"), responded on behalf of RD&D and a third-party complaint was filed which named a number of the original subcontractor entities that worked at the Preserve as third-party defendants (the "Third-Party Defendants"). The Homeowners believe they are entitled to recover from insurance policies with respect to certain claims and causes of action related to the alleged defects for the forty (40) homes in the Litigation.

4. In February of 2009, a settlement was reached for the construction defect Litigation. The settlement was put on the record in District Court in March of 2009. A copy of the stipulation (the "Stipulation") to enable the parties to enforce the settlement (the "Settlement") is attached to the proposed order as Exhibit "1."

5. RD&D supports the Stipulation and the Settlement because the Insurer, which waived its reservation of rights as to the defense of the Lawsuit, is paying for the release of RD&D. The compromise reached in the Settlement is a fair and reasonable one, offering the best

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1 net result for the estate because the Settlement promptly resolves these disputes, avoiding  
 2 protracted and expensive litigation, and eliminates RD&D's exposure of approximately \$4  
 3 million under the Litigation, as demonstrated by the proofs of claim filed in RD&D's bankruptcy  
 4 case, without expending any of RD&D's funds.

5 6. By entering into the Settlement, RD&D eliminates the risk of lengthy, costly and  
 6 potentially unsuccessful litigation.

7 7. RD&D has reviewed the circumstances of the Settlement and does not believe  
 8 that it has any claims or causes of action that will be released pursuant to its release of the  
 9 Homeowners and, therefore, RD&D does not believe it is relinquishing any *bona fide* claims  
 10 with respect to the Homeowners.

11 8. The proposed Settlement results in a fair and equitable compromise for the estate  
 12 at no expense to the estate. Overall, given the substantial risk of lengthy, costly and potentially  
 13 unsuccessful litigation, I believe that the Settlement and all its provisions are reasonable, fair and  
 14 in the best interest of the Debtor, its estate, creditors and all parties in interest.

15 I declare under penalty of perjury pursuant to 28 U.S.C. § 1746 that the foregoing is true  
 16 and correct to the best of my knowledge, information, and belief.

17 Executed this 3rd day of September 2009, at Las Vegas, Nevada.

18  
 19 /s/Paul D. Huygens

20 Paul D. Huygens  
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## EXHIBIT "A"

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Attorneys for Debtors and Debtors in Possession

**UNITED STATES BANKRUPTCY COURT**  
**DISTRICT OF NEVADA**

In re:  
 THE RHODES COMPANIES, LLC, aka  
 "Rhodes Homes," et al.,<sup>1</sup>  
 Debtors.

Case No.: 09-14814-LBR  
 (Jointly Administered)

Chapter 11

Hearing Date: October 2, 2009  
 Hearing Time: 1:30 p.m.  
 Courtroom 1

<sup>1</sup> The Debtors in these cases, along with their case numbers are: Heritage Land Company, LLC (Case No. 09-14778); The Rhodes Companies, LLC (Case No. 09-14814); Tribes Holdings, LLC (Case No. 09-14817); Apache Framing, LLC (Case No. 09-14818); Geronimo Plumbing LLC (Case No. 09-14820); Gung-Ho Concrete LLC (Case No. 09-14822); Bravo, Inc. (Case No. 09-14825); Elkhorn Partners, A Nevada Limited Partnership (Case No. 09- 14828); Six Feathers Holdings, LLC (Case No. 09-14833); Elkhorn Investments, Inc. (Case No. 09-14837); Jarupa, LLC (Case No. 09-14839); Rhodes Realty, Inc. (Case No. 09-73203-001\DOCS\_LA:207373.21

Affects:

- ☐ All Debtors  
☒ Affects the following Debtor(s)

RHODES DESIGN AND DEVELOPMENT  
 CORPORATION

**ORDER GRANTING MOTION OF DEBTOR FOR ORDER APPROVING  
 STIPULATION TO LIFT THE AUTOMATIC STAY TO EFFECTUATE PREPETITION  
 SETTLEMENT WITH THE FULKS HOMEOWNERS [DOCKET NO. \_\_\_\_]**

Upon consideration of the *Motion of Debtor for Order Approving Stipulation to Lift the  
 Automatic Stay to Effectuate Prepetition Settlement with the Fulks Homeowners* [Docket No.  
 \_\_\_\_] (the “Motion”)<sup>2</sup> and good cause appearing, it is hereby ORDERED

1. The Motion is granted.

2. The Stipulation attached hereto as Exhibit “1” is approved and the automatic stay is  
 lifted for the limited purpose of permitting the parties to take all actions necessary to effectuate  
 the Stipulation and the Settlement pursuant to the Motion.

APPROVED / DISAPPROVED:

DATED this \_\_\_\_ day of September 2009.

By: \_\_\_\_\_

UNITED STATES TRUSTEE

August Landis

Office of the United States Trustee

300 Las Vegas Blvd. S., Ste. 4300

Las Vegas, NV 89101

14841); C & J Holdings, Inc. (Case No. 09-14843); Rhodes Ranch General Partnership (Case No. 09-14844); Rhodes Design and  
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 Chalkline, LP (Case No. 09-14862); Glynda, LP (Case No. 09-14865); Tick, LP (Case No. 09-14866); Rhodes Arizona  
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 (Case No. 09-14884); and Pinnacle Grading, LLC (Case No. 09-14887).

<sup>2</sup> All defined terms not defined herein shall have the same meaning as in the Motion.

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Submitted by:

DATED this 4<sup>th</sup> day of September 2009.

By: /s/Zachariah Larson

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**EXHIBIT “1”**

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Attorneys for Debtors and  
 Debtors in Possession

**UNITED STATES BANKRUPTCY COURT**  
**DISTRICT OF NEVADA**

In re:

THE RHODES COMPANIES, LLC, aka  
 "Rhodes Homes," et al.,<sup>3</sup>  
 Debtors.

Case No.: BK-S-09-14814-LBR  
 (Jointly Administered)

Chapter 11

Affects:

☐ All Debtors  
☒ Affects the following Debtor(s)  
 Rhodes Design and Development Corporation

<sup>3</sup> The Debtors in these cases, along with their case numbers are: Heritage Land Company, LLC (Case No. 09-14778); The Rhodes Companies, LLC (Case No. 09-14814); Tribes Holdings, LLC (Case No. 09-14817); Apache Framing, LLC (Case No. 09-14818); Geronimo Plumbing LLC (Case No. 09-14820); Gung-Ho Concrete LLC (Case No. 09-14822); Bravo, Inc. (Case No. 09-14825); Elkhorn Partners, A Nevada Limited Partnership (Case No. 09-14828); Six Feathers Holdings, LLC (Case No. 09-14833); Elkhorn Investments, Inc. (Case No. 09-14837); Jarupa, LLC (Case No. 09-14839); Rhodes Realty, Inc. (Case No. 09-14841); C & J Holdings, Inc. (Case No. 09-14843); Rhodes Ranch General Partnership (Case No. 09-14844); Rhodes Design and Development Corporation (Case No. 09-14846); Parcel 20, LLC (Case No. 09-14848); Tuscany Acquisitions IV, LLC (Case No. 09-14849); Tuscany Acquisitions III, LLC (Case No. 09-14850); Tuscany Acquisitions II, LLC (Case No. 09-14852); Tuscany Acquisitions, LLC (Case No. 09-14853); Rhodes Ranch Golf Country Club, LLC (Case No. 09-14854); Overflow, LP (Case No. 09-14856); Wallboard, LP (Case No. 09-14858); Jackknife, LP (Case No. 09-14860); Batcave, LP (Case No. 09-14861); Chalkline, LP (Case No. 09-14862); Glynda, LP (Case No. 09-14865); Tick, LP (Case No. 09-14866); Rhodes Arizona Properties, LLC (Case No. 09-14868); Rhodes Homes Arizona, L.L.C. (Case No. 09-14882); Tuscany Golf Country Club, LLC (Case No. 09-14884); and Pinnacle Grading, LLC (Case No. 09-14887).

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## **STIPULATION FOR MODIFICATION OF AUTOMATIC STAY – FULKS ACTION**

This stipulation (the “Stipulation”) is made and entered into by Elkhorn Partners Limited Partnership, a Nevada Limited Partnership; Elkhorn Investments, Inc., a Nevada Corporation; Rhodes Design and Development Corporation, a Nevada Corporation doing business as Rhodes Homes (“RD&D”) and Eric Fulks, Trust Of Henry Hung-Yeh Tiee, Samuel and Ossie L. Wiggins, Kerry Anderson, Willie and Lenell Patrick, Jr., William and Carol Q. Griffith, Heidi Metellus, Robert C. and Lorraine Anthonisen, Jr., Bryan and Carla Bertges, Audrey Gray, Margaret F. Williams-Jones; James Candela and Diane Rosser, Roberto And Veronica Medina, Neville Emerton and Julia Moore, Gwen E. Amie, Andrea Crapanzano, Lynn I. Thayer, Christine Graeven and Antoinette Buyan, Paul H. Evers, Vickie L. Curtis, Jeffrey W. and Brenda S. Baker, William N. Thurston, Donald Fieselman and Lisa Wochinski, David Garcia, Linda L. Dale, Farrow J. and Hellen A. Smith, Michael Orlando; Kevin G. Fellowes; Stephen M. Robison; Lee A. O’Brien; Brad and Amie Modglin; Donell Jackson; Larry J. and Ardis Leavitt; Attila S. and Roanna Maczala; Peter M. Chura and Michael T. Palladino; Portia Powell and Victoria Leigh; James and Simone Cook; Curtis A. and Susan Bunce; and Thomas C. Groce (collectively, “Homeowners”), through their respective counsel, and is made in reference to the following facts:

A. Homeowners are the owners of forty (40) single-family residences in a development known as the Preserve located in Las Vegas, Nevada. The residences were originally developed and sold by RD&D. On September 26, 2006, Homeowners filed an action in Clark County District Court (Eighth Judicial District Court) to recover for constructional defects in the above-referenced forty (40) homes. The case is identified as *Fulks, et al. v. Rhodes Design and Development, et al.*, Clark County District Court Case No. A528806. Insurance defense counsel responded on behalf of RD&D and a third-party complaint was filed which named a number of the original subcontractor entities that worked at the Preserve as Third-Party Defendants.

B. Sometime in February of 2009, a settlement (the “Settlement”) was reached for the construction defect case, *Fulks, et al. v. Rhodes Design and Development et al.*, and the

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Settlement was put on the record in March of 2009. Pursuant to the Settlement, Homeowners believe they are entitled to recover from insurance policies with respect to certain claims and causes of action related to the alleged defects for the forty (40) homes in that action. The Settlement consists of certain payments to be made by the various insurance companies which insured the subcontractor Third-Party Defendants and RD&D in return for an executed release from each of the Homeowners.

C. On March 31, 2009, RD&D filed a chapter 11 petition under the United States Bankruptcy Code in the United States Bankruptcy Court for the District of Nevada. As a result of the pendency of the bankruptcy case, all proceedings against RD&D are automatically stayed.

D. RD&D is willing to stipulate to the modification of the automatic stay for the sole purpose of allowing Homeowners to proceed with the Settlement, which was put on the record prior to March 31, 2009, and only as against applicable insurance proceeds pursuant to the terms of the Settlement. The entirety of the Settlement amount will be paid from RD&D's insurance provider; none of the monies needed to effectuate the Settlement will be provided by funds from the RD&D bankruptcy estate.

NOW, THEREFORE, IT IS HEREBY STIPULATED by the undersigned parties, through their counsel and respective representatives that:

(a) The automatic stay under section 362 of the Bankruptcy Code shall be modified, subject to Bankruptcy Court approval, to permit Homeowners to proceed against RD&D as a nominal defendant only so that the Homeowners may proceed with and enforce the Settlement that was reached in *Fulks, et al. v. Rhodes Design and Development, et al.*, Clark County District Court Case No. A528806. The Settlement in that action and the monies to be paid on behalf of RD&D are solely through RD&D's available insurance policies

(b) Any and all portions of the Homeowners' claims or causes of action, whether prepetition or postpetition claims or causes of action, that are not fully satisfied by RD&D's available insurance policies under the Settlement are hereby forever waived and discharged as against RD&D and the Debtors, even if the Homeowners are unable to obtain any recovery from any insurance policies. Upon entry of the Order approving this Stipulation, Homeowners' claims

1 that are filed in the RD&D bankruptcy case, and listed on Attachment A hereto, shall be deemed  
2 withdrawn and the claims agent shall be directed to reflect such proofs of claims as withdrawn.

3 (c) The Bankruptcy Court retains jurisdiction to resolve any dispute arising from the  
4 interpretation or enforcement of this Stipulation.

5 (d) By entering into this Stipulation, RD&D is not waiving any defenses at law or in  
6 equity.

7  
8 DATED this 4th day of September 2009.

DATED this 4th day of September 2009.

9 By: /s/ Eric Ransavage  
10 SHINNICK, RYAN & RANSAVAGE P.C.  
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## Attachment A

Claim #	Claimant	Amount	Date
58	NEVILLE EMERTON AND JULIA MOORE	\$100,000.00	07/16/09
59	PAUL EVERS	\$100,000.00	07/16/09
60	KEVIN FELLOWES	\$100,000.00	07/16/09
61	MIKELL AND LINDA DALE	\$100,000.00	07/16/09
62	VICKIE CURTIS	\$100,000.00	07/16/09
63	JAMES AND SIMONE COOK	\$100,000.00	07/16/09
64	PETER CHURA AND MICHAEL PALLADINO	\$100,000.00	07/16/09
65	JAMES CANDELA AND DIANE ROSSER	\$100,000.00	07/16/09
66	CURTIS BUNCE	\$100,000.00	07/16/09
67	BRYAN AND CARLA BERTGES	\$100,000.00	07/16/09
68	JEFFREY AND BRENDA BAKER	\$100,000.00	07/16/09
69	SEBASTIAN AND ANDREA CRAPANZANO	\$100,000.00	07/16/09
70	ROBERT AND LORRAINE ANTHONISEN	\$100,000.00	07/16/09
71	KERRY ANDERSON	\$100,000.00	07/16/09
72	GWEN E. AMIE	\$100,000.00	07/16/09
73	MARGARET WILLIAMS-JONES	\$100,000.00	07/16/09
74	SAMUEL AND OSSIE WIGGINS	\$100,000.00	07/16/09
75	HENRY AND HUNG-YEH TIEE & JENNY AND DAVID PEACOCK	\$100,000.00	07/16/09
76	WILLIAM THURSTON	\$100,000.00	07/16/09
77	LYNN THAYER	\$100,000.00	07/16/09
78	FARROW AND HELLEN SMITH	\$100,000.00	07/16/09
79	STEPHEN ROBISON	\$100,000.00	07/16/09
80	WILLIE AND LENELL PATRICK	\$100,000.00	07/16/09
81	MICHAEL AND MICHELLE ORLANDO	\$100,000.00	07/16/09
82	LEE O'BRIEN	\$100,000.00	07/16/09
83	BRAD AND AMIE MODGLIN	\$100,000.00	07/16/09
84	HEIDI METELLUS	\$100,000.00	07/16/09
85	VERONICA AND ROBERTO MEDINA	\$100,000.00	07/16/09
86	ATTILLA AND ROANNA MACZALA	\$100,000.00	07/16/09
87	VICTORIA LEIGH AND PORTIA POWELL	\$100,000.00	07/17/09
88	LARRY AND ARDIS LEAVITT	\$100,000.00	07/17/09
89	DONELL JACKSON	\$100,000.00	07/17/09
90	THOMAS GROCE	\$100,000.00	07/17/09
91	F. WILLARD AND CAROL GRIFFITH	\$100,000.00	07/17/09
92	AUDREY GRAY	\$100,000.00	07/17/09
93	CHRISTINE GRAEVEN AND ANTOINETTE BUYAN	\$100,000.00	07/17/09
94	DAVID GARCIA AND VICKEY MURRAY-GARCIA	\$100,000.00	07/17/09
95	DAVID GARCIA AND VICKEY MURRAY-GARCIA	\$100,000.00	07/17/09
96	ERIC AND CAROLE FULKS	\$100,000.00	07/17/09
97	DONALD FIESELMAN AND LISA WOCHINSKI	\$100,000.00	07/17/09

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